



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 28th March, 1980:—

BILL No. 76 of 1980

A Bill to make provision for the regulation and development of the profession of Company Secretaries

Be it enacted by Parliament in the Thirty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Company Secretaries Act, 1980.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. (1) In this Act, unless the context otherwise requires,—
 - (a) "Associate" means an Associate Member of the Institute;
 - (b) "Companies Act" means the Companies Act, 1956;
 - (c) "Company Secretary" means a person who is a member of the Institute;
 - (d) "Council" means the Council of the Institute constituted under section 9;
 - (e) "dissolved company" means the Institute of Company Secretaries of India registered under the Companies Act;
 - (f) "Fellow" means a Fellow Member of the Institute;

Short title, extent and commencement.

Definitions and interpretation.

1 of 1986.

(g) "Institute" means the Institute of Company Secretaries of India constituted under this Act;

(h) "prescribed" means prescribed by regulations made under this Act;

(i) "President" means the President of the Council;

(j) "Register" means the Register of members of the Institute maintained under this Act;

(k) "Vice-President" means the Vice-President of the Council;

(l) "year" means the period commencing on the 1st day of April of any year and ending on the 31st day of March of the succeeding year;

(m) words and expressions used herein and not defined but defined in the Companies Act shall have the meanings respectively assigned to them in that Act.

(2) Save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received,—

(a) engages himself in the practice of the profession of Company Secretaries to, or in relation to, any company; or

(b) offers to perform or performs services in relation to the promotion, forming, incorporation, amalgamation, reconstruction, reorganisation or winding up of companies; or

(c) offers to perform or performs such services as may be performed by—

(i) an authorised representative of a company with respect to filing, registering, presenting, attesting or verifying any documents (including forms, applications and returns) by or on behalf of the company,

(ii) a share transfer agent,

(iii) an issue house,

(iv) a share and stock broker,

(v) a secretarial auditor or consultant,

(vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947, the Industries (Development and Regulation) Act, 1951, the Companies Act, the Securities Contracts (Regulation) Act, 1956, any of the rules or bye-laws made by a recognised stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969, the Foreign Exchange Regulation Act, 1973, or under any other law for the time being in force.

29 of 1947.
65 of 1951.
42 of 1956.
54 of 1969.
46 of 1973.

(vii) issuing certificates on behalf of, or for the purposes of, a company; or

(d) holds himself out to the public as a Company Secretary in practice; or

(e) renders professional services or assistance with respect to matters of principle or detail relating to the practice of the profession of Company Secretaries; or

(f) renders such other services as, in the opinion of the Council, are or may be rendered by a Company Secretary in practice;

and the words "to be in practice", with their grammatical variations and cognate expressions, shall be construed accordingly.

CHAPTER II

INSTITUTE OF COMPANY SECRETARIES OF INDIA

3. (1) All persons whose names are entered in the Register of the dissolved company immediately before the commencement of this Act and all persons who may hereafter have their names entered in the Register to be maintained under this Act, so long as they continue to have their names borne on the Register to be maintained under this Act, are hereby constituted a body corporate by the name of the Institute of Company Secretaries of India and all such persons shall be known as members of the Institute.

Incorporation of the Institute.

(2) The Institute shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of property, movable or immovable and shall by its name sue or be sued.

4. (1) Any of the following persons shall be entitled to have his name entered in the Register, namely:—

Entry of names in the Register.

(a) any person who immediately before the commencement of this Act was an Associate or a Fellow (including an Honorary Fellow) of the dissolved company;

(b) any person who is a holder of the Diploma in Company Secretaryship awarded by the Government of India;

(c) any person who has passed the examinations conducted by the dissolved company and has completed training either as specified by the dissolved company or as prescribed by the Council, except any such person who is not a permanent resident of India;

(d) any person who has passed such examination and completed such training, as may be prescribed for membership of the Institute;

(e) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed under this Act for membership of the Institute;

Provided that in the case of any person belonging to any of the classes mentioned in this sub-section who is not permanently residing in India, the Central Government or the Council may impose such further conditions as it may deem to be necessary or expedient in the public interest.

(2) Every person belonging to the class mentioned in clause (a) or clause (b) of sub-section (1) shall have his name entered in the Register without the payment of any entrance fee.

(3) Every person belonging to any of the classes mentioned in clauses (c), (d) and (e) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of prescribed entrance fee, which shall not exceed four hundred rupees in any case.

(4) The Central Government may take such steps as may be necessary for the purpose of having the names of all persons belonging to the classes mentioned in clauses (a) and (b) of sub-section (1) entered in the Register at the commencement of this Act.

(5) Notwithstanding anything contained in this section, the Council may confer on any person Honorary Fellow Membership, if the Council is of the opinion that such person has made a significant contribution to the profession of Company Secretaries and thereupon the Council shall enter the name of such person in the Register but such person shall not have any voting rights in any election or meetings of the Institute and shall not also be required to pay any fee to the Institute.

Associates
and
Follows,

5. (1) The members of the Institute shall be divided into two classes designated respectively as Associates and Fellows.

(2) Any person other than a person to whom the provisions of sub-section (4) apply, shall, on his name being entered in the Register, be deemed to have become an Associate and as long as his name remains so entered, shall be entitled to use the letters "A.C.S." after his name to indicate that he is an Associate.

(3) A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of the prescribed entrance fee, which shall not exceed four hundred rupees in any case, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow.

Explanation I.—For the purposes of this sub-section, a person shall be deemed to have practised in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practise during that period.

Explanation II.—In computing the period during which a person has been an Associate of the Institute, there shall be included any continuous period during which the person has been an Associate of the dissolved company immediately before he became an Associate of the Institute.

(4) Any person who was a Fellow of the dissolved company and who is entitled to have his name entered in the Register under clause (a) of sub-section (1) of section 4, shall be entered in the Register as a Fellow.

(5) Any person whose name is entered in the Register as a Fellow shall, so long as his name remains so entered, be entitled to use the letters "F.C.S." after his name to indicate that he is a Fellow.

6. (1) No member of the Institute shall be entitled to practise, whether in India or elsewhere, unless he has obtained from the Council a certificate of practice.

Certificate
of prac-
tice.

(2) A member who desires to be entitled to practise shall make an application in such form and pay such annual fee, for his certificate as may be prescribed which shall not exceed two hundred rupees in any case, and such fee shall be payable on or before the 1st day of April in each year.

7. Every member of the Institute in practice shall, and any other member may, use the designation of a Company Secretary and no member using such designation shall use any other description, whether in addition thereto or in substitution therefor:

Members
to be
known
as Com-
pany Sec-
retaries.

Provided that nothing in this section shall be deemed to prohibit any such member from adding any other description or letters to his name, if entitled thereto, to indicate membership of such other institute whether in India or elsewhere as may be recognised in this behalf by the Council, or any other qualification that he may possess, or to prohibit a firm, all the partners of which are members of the Institute and in practice, from being known by its firm name as Company Secretaries.

8. Notwithstanding anything contained in section 4, a person shall not be entitled to have his name entered in, or borne on, the Register if he—

Disabili-
ties.

(a) has not attained the age of twenty-one years at the time of his application for the entry of his name in the Register; or

(b) is of unsound mind and stands so adjudged by a competent court; or

(c) is an undischarged insolvent; or

(d) being a discharged insolvent, has not obtained from the court a certificate stating that his insolvency was caused by misfortune without any misconduct on his part; or

(e) has been convicted by a competent court, whether within or without India, of an offence involving moral turpitude and punishable with imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or

(f) has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct:

Provided that a person who has been removed from membership for a specified period shall not be entitled to have his name entered in the Register until the expiry of such period.

CHAPTER III

COUNCIL OF THE INSTITUTE

Constitu-
tion of
the Coun-
cil of the
Institute.

9. (1) There shall be a Council of the Institute for the management of the affairs of the Institute and for discharging the functions assigned to it by or under this Act.

(2) The Council shall be composed of—

(a) not more than twelve persons elected by members of the Institute from amongst the Fellows chosen in such manner and from such regional constituencies as may be notified in this behalf by the Central Government in the Official Gazette; and

(b) not more than four persons nominated by the Central Government.

Mode of
election
to the
Coun-
cil.

10. (1) Elections under clause (a) of sub-section (2) of section 9 shall be conducted in the prescribed manner.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government in this behalf and the decision of such Tribunal shall be final:

Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election.

(3) The expenses of the Tribunal shall be borne by the Council.

(4) Notwithstanding anything contained in this section and in Chapter IX, the Council of the dissolved company shall on the commencement of this Act, become the Council of the Institute and shall function as such—

(i) for a period of two years from such commencement, or

(ii) till the Council is constituted in accordance with the provisions of sub-section (2) of section 9,

whichever is earlier.

Explanation.—For the purposes of this sub-section, the Council shall be deemed to have been constituted in accordance with the provisions of sub-section (2) of section 9 with effect from such date [not being later than thirty days from the date on which the results of the first elections, under clause (a) of the said sub-section (2) are announced] as the Central Government may notify in the Official Gazette.

Nomina-
tion in
default
of elec-
tion.

11. If the members of the Institute fail to elect any member under clause (a) of sub-section (2) of section 9 from any of the regional constituencies that may be notified under that clause, the Central Government may nominate any duly qualified person from such constituency to fill up the vacancy, and any person so nominated shall be deemed to be a duly elected member of the Council.

President
and
Vice-
President.

12. (1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President falls vacant,

the Council shall choose a person to be the President or the Vice-President, as the case may be:

Provided that the President of the Council of the dissolved company shall continue to hold such office after the commencement of this Act, until such time as a President is elected under the provisions of this sub-section.

(2) The President shall be the Chief Executive Authority of the Council.

(3) The President or the Vice-President shall hold office for a period of one year from the date on which he is chosen but so as not to extend beyond his term of office as a member of the Council, and subject to his being a member of the Council at the relevant time, he shall be eligible for re-election.

(4) On the expiration of the duration of the Council, or of the term of office of the President thereof, the President shall continue to hold office until such time as a new President is elected and takes over charge of his duties.

(5) In the event of the occurrence of any vacancy in the office of the President, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this section to fill such vacancy enters upon his office and when the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

13. (1) Any member of the Council may at any time resign his membership by writing under his hand addressed to the President, and the seat of such member shall become vacant when such resignation is notified in the Official Gazette.

Resignation of membership and casual vacancies.

(2) A member of the Council shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council or of any of the Committees which has been constituted by the Council and of which he is a member or if his name is, for any cause, removed from the Register under the provisions of section 20.

(3) A casual vacancy in the office of a member of the Council shall be filled by fresh election from the constituency concerned or by nomination by the Central Government, as the case may be, and the person elected or nominated to fill the vacancy shall hold office until the dissolution of the Council:

Provided that no election shall be held to fill a casual vacancy occurring within six months prior to the date of the expiration of the term of the Council, but such a vacancy may be filled by nomination by the Central Government after consultation with the President of the Council.

(4) No act done by the Council shall be called in question on the ground merely of the existence of any vacancy in, or defect in the constitution of, the Council.

Duration
and dis-
solution
of the
Council.

14. (1) The duration of any Council constituted under this Act shall be three years from the date of its first meeting.

(2) Notwithstanding the expiration of the duration of a Council thereafter in this sub-section referred to as the former Council), the former Council shall continue to exercise its functions under this Act until a new Council is constituted in accordance with the provisions of this Act and on such constitution the former Council shall stand dissolved.

Functions
of the
Council.

15. (1) The duty of carrying out the provisions of this Act shall be vested in the Council.

(2) In particular, and without prejudice to the generality of the foregoing power, the duties of the Council shall include—

(a) the prescribing of the standards for, and conduct of examinations for enrolment of candidates in the Register and of the fees therefor;

(b) the registration and training of students;

(c) the prescribing of qualifications for entry in the Register;

(d) the recognition of foreign qualifications and training for purposes of enrolment;

(e) the granting or refusal of certificates of practice under this Act;

(f) the maintenance and publication of a Register of persons qualified to practise as Company Secretaries;

(g) the levy and collection of fees from members, examinees and other persons;

(h) the removal of names from the Register and restoration to the Register of names which have been removed;

(i) the regulation and maintenance of the status and the standards of professional qualifications of members of the Institute;

(j) the carrying out, by granting financial assistance to persons other than members of the Council or in any other manner, of research in such matters of interest to Company Secretaries as may be prescribed;

(k) the maintenance in the prescribed manner of libraries and the publication in the prescribed manner of books and periodicals relating to management of companies and such allied subjects as may be prescribed;

(l) the granting of such financial or other assistance to students of the Institute as may be prescribed;

(m) the exercise of such disciplinary powers as may be prescribed.

16. (1) For the efficient performance of its duties and functions, the Council shall appoint a Secretary who shall be a member of the Institute and may—

Staff, remuneration and allowances.

(a) appoint such other persons on the staff of the Institute as it deems necessary;

(b) prescribe the terms and conditions of service and the scales of pay of the Secretary and other employees of the Institute, including persons who have become employees of the Institute under section 33;

(c) fix the allowances of the President, Vice-President and other members of the Council and its Committees.

(2) The Secretary of the Institute shall be entitled to participate in the meetings of the Council and the Committees thereof but shall not be entitled to vote thereat.

17. (1) The Council shall constitute from amongst its members the following Standing Committees, namely:—

Committees of the Council.

(a) an Executive Committee;

(b) a Disciplinary Committee; and

(c) an Examination Committee.

(2) The Council may also constitute a Training and Educational Facilities Committee, Professional Research and Publications Committee and such other Committees from amongst its members as it deems necessary for the purpose of carrying out the provisions of this Act.

(3) The Executive Committee shall consist of the President, and the Vice-President, *ex officio*, and three other members of the Council elected by the Council.

(4) The Disciplinary Committee shall consist of the President, *ex officio*, one member to be nominated by the Central Government from amongst the members nominated to the Council by that Government and one member to be elected by the Council.

(5) The Examination Committee shall consist of the President or the Vice-President, *ex officio*, as the Council may decide, and two other members of the Council elected by the Council.

(6) Notwithstanding anything contained in this section, any Committee formed under sub-section (2), may, with the sanction of the Council co-opt such other members of the Institute not exceeding two-thirds of the total membership of the Committee as the Committee thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the Committee.

(7) Every Committee constituted under this section shall elect its own Chairman:

Provided that—

(i) where the President is a member of such Committee, he shall be the Chairman of such Committee, and in his absence, the Vice-President, if he is a member of such Committee, shall be its Chairman; and

(ii) where the President is not a member of such Committee, but the Vice-President is a member, he shall be its Chairman,

(8) The Standing Committees and other Committees formed under this section shall exercise such functions and be subject to such conditions in the exercise thereof as may be prescribed.

Finances
of the
Council.

18. (1) There shall be established a fund under the management and control of the Council into which shall be paid all moneys (including donations and grants) received by the Council and out of which shall be met all expenses including any donations made and liabilities properly incurred by the Council.

(2) The Council may invest any money for the time being standing to the credit of the fund in any Government security or in any other security approved by the Central Government.

(3) The Council shall keep proper accounts of the funds distinguishing capital from revenue.

(4) The annual accounts of the Council shall be subject to audit by a Chartered Accountant in practice within the meaning of the Chartered Accountants Act, 1949, to be appointed annually by the Council:

38 of 1949.

Provided that no member of the Council who is a Chartered Accountant or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section.

(5) As soon as may be practicable at the end of each year, but not later than the 30th day of September of the year next following, the Council shall cause to be published in the Gazette of India a copy of the audited accounts and the report of the Council for that year and copies of the said accounts and report shall be forwarded to the Central Government and to all the members of the Institute.

(6) Subject to such directions as the Central Government may, by order in writing, make in this behalf, the Council may borrow—

(a) any money required for meeting its liabilities on capital account on the security of the fund or on the security of any other assets for the time being belonging to it; or

(b) for the purpose of meeting current liabilities pending the receipt of income by way of temporary loan or over-draft.

CHAPTER IV

REGISTER OF MEMBERS

Register.

19. (1) The Council shall maintain in the prescribed manner a Register of the members of the Institute.

(2) The Register shall include the following particulars about every member of the Institute, namely:—

(a) his full name, date of birth, domicile, residential and professional addresses;

(b) the date on which his name is entered in the Register;

(c) his qualifications;

(d) whether he holds a certificate of practice; and

(e) any other particulars which may be prescribed.

(3) The Council shall cause to be published in such manner as may be prescribed a list of members of the Institute as on the 1st day of April of each year, and shall, if requested to do so by any such member, send him a copy of such list.

(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee differing in amount according as he is an Associate or a Fellow as may be prescribed, which shall not exceed three hundred rupees in any case.

20. (1) The Council may remove from the Register the name of any member of the Institute—

Removal
from the
Register.

(a) who is dead; or

(b) from whom a request has been received to that effect; or

(c) who has not paid any prescribed fee required to be paid by him; or

(d) who is found to have been subject at the time when his name was entered in the Register, or who at any time thereafter has become subject, to any of the disabilities mentioned in section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register.

(2) The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute.

CHAPTER V

MISCONDUCT

21. (1) Where on receipt of information by, or a complaint made to it, the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee constituted under section 17, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.

Procedure
in inquiries
relating to
misconduct
of members
of the
Institute.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record its finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit;

Provided that where the Council is of opinion that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is a misconduct specified in the Second Schedule, it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the Institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an opportunity of being heard and may thereafter make any of the following orders, namely:—

(a) direct that the proceedings be filed, or dismiss the complaint, as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council for further inquiry and report.

(7) Where it appears to the High Court that the transfer of any case pending before it to another High Court will promote the ends of justice or tend to the general convenience of the parties, it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such case is transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I.—In this section, “High Court” means the highest civil court of appeal, not including the Supreme Court, exercising jurisdiction in the area in which the person whose conduct is being inquired into is in service or carries on his profession or has his principal place of profession at the commencement of the inquiry:

Provided that where the cases relating to two or more members of the Institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II.—For the purposes of this section, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

5 of 1908.

(8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee referred to in sub-section (1) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavits.

22. For the purposes of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

Professional misconduct defined.

CHAPTER VI

REGIONAL COUNCILS

23. (1) For the purpose of advising and assisting it on matters concerning its functions, the Council may constitute such Regional Councils as and when it deems fit for one or more of the regional constituencies that may be notified by the Central Government under clause (a) of sub-section (2) of section 9.

Constitution and functions of Regional Councils.

(2) The Regional Councils shall be constituted in such manner and exercise such functions as may be prescribed.

(3) Notwithstanding anything contained in this section, each Regional Council of the dissolved company shall, on the commencement of this Act, become the Regional Council of the Institute for the area for which it was functioning as a Regional Council immediately before such commencement and shall function as such—

(i) for a period of two years from such commencement, or

(ii) till a Regional Council is constituted for such area in accordance with the provisions of this section,

whichever is earlier.

CHAPTER VII

PENALTIES

24. Subject to the provisions of section 7, any person who,—

(a) not being a member of the Institute,—

(i) represents that he is a member of the Institute; or

(ii) uses the designation “Company Secretary”; or

Penalty for falsely claiming to be a member, etc.

(iii) uses the letters "A.C.S." or "F.C.S." after his name; or

(b) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a Company Secretary,

shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Penalty
for using
name of
the Coun-
cil, or
award-
ing degree
of
Company
Secretary.

25. (1) Save as otherwise provided in this Act, no person shall—

(a) use a name or a common seal which is identical with the name or the common seal of the Institute or so nearly resembles it as to deceive or as is likely to deceive the public;

(b) award any degree, diploma or certificate or bestow any designation which indicates or purports to indicate the position or attainment of any qualification or competence in Company Secretaryship similar to that of a member of the Institute; or

(c) seek to regulate in any manner whatsoever the profession of Company Secretaries.

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

(3) Nothing contained in this section shall apply to any University or other institution established by law or to any body affiliated to the Institute.

Companies
not to
engage in
Company
Secre-
taryship.

26. (1) No company, whether incorporated in India or elsewhere, shall practise as Company Secretaries.

(2) Any company contravening the provisions of sub-section (1) shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with fine which may extend to five thousand rupees.

Unquali-
fied
persons
not to
sign
docu-
ments.

27. (1) No person other than a member of the Institute shall sign any document on behalf of a Company Secretary in practice or a firm of such Company Secretaries in his or its professional capacity.

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

28. (1) If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to, the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences
by com-
panies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

29. No person shall be prosecuted under this Act except on a complaint made by or under the order of the Council or of the Central Government.

Sanction
to
prosecute.

CHAPTER VIII

APPEALS

30. (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in clause (a) or clause (b) of sub-section (4) of section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court:

Appeal

Provided that the High Court may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time

(2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub-section (2) or sub-section (4) of section 21 and may—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the Council for such further enquiry as the High Court considers proper in the circumstances of the case;

(d) pass such other order as the High Court thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has been given an opportunity of being heard.

Explanation.—In this section, “High Court” and “member of the Institute” have the same meanings as in section 21.

CHAPTER IX

DISSOLUTION OF THE INSTITUTE OF COMPANY SECRETARIES OF INDIA REGISTERED UNDER THE COMPANIES ACT

Dissolu-
tion of the
Institute
of Com-
pany Sec-
retaries of
India re-
gistered
under the
Compan-
ies Act.

31. On the commencement of this Act—

(a) the company known as the Institute of Company Secretaries of India registered under the Companies Act shall stand dissolved and thereafter no person shall make, assert or take any claims or demands or proceedings against the dissolved company or against any officer thereof in his capacity as such officer except in so far as may be necessary, for enforcing the provisions of this Act;

(b) the right of every member to, or in respect of, the dissolved company shall be extinguished, and thereafter no member of that company shall make, assert or take any claims or demands or proceedings in respect of that company except as provided in this Act.

Transfer
of assets
and
liabilities
of the
dis-
solved
company
to the
Institute.

32. (1) On the commencement of this Act, there shall be transferred to and vested in the Institute all the assets and liabilities of the dissolved company.

(2) The assets of the dissolved company shall be deemed to include all rights and powers, and all property, whether movable or immovable, of that company, including in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in or arising out of such property as may be in the possession of the dissolved company and all books of accounts, papers or documents of the dissolved company; and the liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing of that company.

(3) All contracts, debts, bonds, agreements and other instruments of whatever nature to which the dissolved company is a party, subsisting or having effect immediately before the commencement of this Act, shall be of as full force and effect against or in favour of the Institute, as the case may be, and may be enforced as fully and effectively as if instead of the dissolved company, the Institute had been a party thereto.

(4) If, on the commencement of this Act, any suit, appeal or other legal proceeding of whatever nature by or against the dissolved company is pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer to the Institute of the assets and liabilities of the dissolved company or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Institute, in the

same manner and to the same extent as it would or may be continued, prosecuted and enforced by or against the dissolved company if this Act had not been passed.

33. (1) Every person employed in the dissolved company and continuing in its employment immediately before the commencement of this Act shall, as from such commencement, become an employee of the Institute, shall hold his office or service therein by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held the same under the dissolved company if this Act had not been passed, and shall continue to do so unless and until his employment in the Institute is terminated or until his remuneration, terms and conditions of employment are duly altered by the Institute.

Provisions
respecting
employees
of the
dissolved
company.

14 of 1947.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any employee of the dissolved company to the Institute shall not entitle any such employee to any compensation under that Act or other law, and no such claim shall be entertained by any court, tribunal or other authority.

CHAPTER X

MISCELLANEOUS

34. (1) Where an order is made under this Act reprimanding a member, a record of the punishment shall be entered against his name in the Register.

Alteration
in the
Register
and can-
cellation
of certi-
ficate.

(2) Where the name of any member is removed, the certificate of practice granted to him under this Act shall be recalled and cancelled.

35. (1) The Central Government may, from time to time, issue such directions to the Council as in the opinion of the Central Government are conducive to the fulfilment of the objects of this Act and in the discharge of its functions, the Council shall be bound to carry out any such directions.

Directions
of the
Central
Govern-
ment.

(2) Directions issued under sub-section (1) may include directions to the Council to make any regulations or to amend or revoke any regulations already made.

(3) If, in the opinion of the Central Government, the Council has persistently committed default in giving effect to the directions issued under this section, the Central Government may, after giving an opportunity to the Council to state its case, by order, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be specified by the Central Government.

(4) Where the Central Government passes an order under sub-section (3) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Institute and to exercise such functions as may be specified in this behalf by the Central Government.

Protection
of action
taken in
good
faith.

36. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any regulations or orders made thereunder.

Mainte-
nance of
branch
offices.

37. (1) Where a Company Secretary in practice or a firm of such Company Secretaries has more than one office in India, each one of such offices shall be in the separate charge of a member of the Institute:

Provided that the Council may in suitable cases exempt any Company Secretary in practice or firm of such Company Secretaries from the operation of this sub-section.

(2) Every Company Secretary in practice or firm of such Company Secretaries maintaining more than one office shall send to the Council a list of offices and the persons in charge thereof and shall keep the Council informed of any changes in relation thereto.

Recipro-
city.

38. (1) Where any country, notified by the Central Government in this behalf in the Official Gazette, prevents persons of Indian domicile from becoming members of any institution similar to the Institute established under this Act or from practising the profession of Company Secretaryship or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to become a member of the Institute or practise the profession of Company Secretaries in India.

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to Company Secretaryship shall be recognised for the purposes of entry in the Register.

Power to
make
regula-
tions.

39. (1) The Council may, by notification in the Gazette of India, make regulations for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the professions that may be recognised under sub-section (2) of section 2 and items (1), (3) and (4) of Part I of the First Schedule;

(b) the examinations and training for the purposes of clauses (c), (d) and (e) of sub-section (1) of section 4;

(c) the manner of making an application and granting thereof under sub-section (3) of section 4 or sub-section (3) of section 5;

(d) the fees payable under sub-section (3) of section 4, sub-section (3) of section 5, sub-section (2) of section 6, clause (a) of sub-section (2) of section 15, sub-section (4) of section 19 and clause (c) of sub-section (1) of section 20;

(e) the qualifications and practical experience for the purposes of sub-section (3) of section 5;

(f) the form in which an application may be made under sub-section (2) of section 6;

(g) the manner in which an election to the Council may be conducted under section 10;

(h) the transaction of business by the Council for the discharge of its functions under section 15 and other provisions of this Act, the place at which and the intervals at which the Council shall hold its meetings for the transaction of such business, the procedure to be followed at such meetings and all other matters connected therewith;

(i) the regulation and maintenance of the status and standards of professional qualifications of members of the Institute, as required by clause (i) of sub-section (2) of section 15;

(j) the carrying out of research in matters of interest to Company Secretaries as required by clause (j) of sub-section (2) of section 15;

(k) the maintenance of libraries and publication of books and periodicals relating to management of companies and allied subjects, as required by clause (k) of sub-section (2) of section 15;

(l) the exercise of disciplinary powers, as required by clause (m) of sub-section (2) of section 15;

(m) the transaction of business by the Standing Committees and other Committees referred to in section 17, the places at which and the intervals at which such committees shall hold their meetings for the transaction of such business, the procedure to be followed at such meeting and all other matters connected therewith;

(n) the manner in which the Register may be maintained under sub-section (1) of section 19;

(o) the other particulars to be included in the Register, as required by clause (e) of sub-section (2) of section 19;

(p) the manner in which the annual list of members of the Institute may be published under sub-section (3) of section 19;

(q) the inquiries to be held under sub-section (1) of section 21;

(r) the manner in which Regional Council may be constituted under sub-section (2) of section 23 and the functions thereof;

(s) the conditions subject to which foreign qualifications may be recognised under sub-section (2) of section 38;

(t) any other matter which is required to be, or may be, prescribed under this Act.

(3) All regulations made by the Council under this Act shall be subject to the condition of previous publication and to the approval of the Central Government.

(4) Every regulation shall, as soon as may be after it is made by the Council, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have

effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

THE FIRST SCHEDULE

[See sections 21(4) and 22]

PART I

Professional misconduct in relation to members of the Institute in practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any other person to practise in his name as a Company Secretary unless such other person is a Company Secretary or is a member of such other recognised profession as may be prescribed in this behalf, and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work to any person, other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner.

Explanation.—In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept, except from a member of the Institute or from any one belonging to any of the recognised professions prescribed for the purpose, any part of the profits, fees or other remuneration arising out of the work which is not of a professional nature;

(4) enters into partnership with any person other than a Company Secretary in practice or a member of any other recognised profession as may be prescribed or a person resident without India who but for his residence abroad would have been entitled to be registered as a member of the Institute under clause (e) of subsection (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of membership of the Institute provided that the Company Secretary shares in the fees or profits of the professional work of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a Company Secretary, any professional work;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expression other than Company Secretary on professional documents, visiting cards, letter-heads or sign boards,

unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act;

(11) accepts a position as Company Secretary in practice previously held by some other Company Secretary in practice in such conditions as to constitute under-cutting;

(12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer,

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he—

- (1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;
- (2) not being a Fellow styles himself as a Fellow;
- (3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees;
- (4) defalcates or embezzles moneys received in his professional capacity.

THE SECOND SCHEDULE

[See sections 21(5) and 22]

PART I

Professional misconduct in relation to members of the Institute in practice requiring action by a High Court

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

- (1) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force;
- (2) certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice;
- (3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;
- (4) expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;
- (5) deliberately aids in or abets the concealment in his report or statement of a material fact known to him although the disclosure of which is necessary to make such statement not misleading;
- (6) fails to disclose in his report a material mis-statement known to him and with which he is concerned in a professional capacity;
- (7) is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

(10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

Professional misconduct in relation to members of the Institute generally requiring action by a High Court

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) contravenes any of the provisions of this Act or the regulations made thereunder;

(2) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Official Gazette.

STATEMENT OF OBJECTS AND REASONS

One of the basic concepts recognised by the Companies Act, 1956, is that the affairs of companies encompass not only the interests of the shareholders and those entrusted with the management, but also the interests of workers, consumers and the community at large. Besides the Companies Act, there are other allied enactments like the Capital Issues (Control) Act, 1947, the Industries (Development and Regulation) Act, 1951, the Monopolies and Restrictive Trade Practices Act, 1969, the Foreign Exchange Regulation Act, 1973 and other Acts which also have a direct and substantial bearing on the working of the corporate sector in India. In order to ensure that companies do comply with various provisions of law, the necessity for companies to appoint qualified Secretaries with certain professional qualifications and training was being increasingly felt. From 1961 onwards, therefore, the Department of Company Affairs started holding of examinations for company secretaryship and awarding the Diploma called the Government Diploma in Company Secretaryship. This position continued till 1968 when the Government conceived the idea of giving statutory recognition to the Institute of Company Secretaries. However, to begin with, it was decided in 1968 to promote a separate institution under section 25 of the Companies Act, i.e. a non-profit sharing company and later to convert it into a statutory body. Accordingly, the Government of India promoted the Institute of Company Secretaries of India and registered it as a company on the 4th October, 1968 under a licence granted under section 25 of the Companies Act.

The Administrative Reforms Commission has also examined the desirability of encouraging the growth of the profession of Company Secretaries as a necessary adjunct for a more efficient working of the corporate sector. The said Commission has also recommended that the companies with a certain paid-up capital should compulsorily appoint qualified Secretaries and that suitable qualifications for such Secretaries should be prescribed by the Government. They further observed that the qualification should include passing of an examination conducted by the Government on all-India basis and training in the corporate sector (Recommendation No. 10, Chapter VI, Paragraph 12). For the past ten years, the profession of Company Secretaries has grown and more and more of our younger citizens are registering for examinations conducted by the Institute. Apart from the employment prospects and potential which the profession holds out, the need for having increasing number of professionally qualified Company Secretaries has been further recognised by the Companies (Amendment) Act, 1974, which requires every company having a paid-up share capital of Rs. 25 lakhs and above to appoint a qualified person as a whole-time Secretary. Even in respect of companies with a paid-up share capital of less than Rs. 25 lakhs the need and desirability of having the services of qualified Secretaries in practice is being increasingly felt by the companies. The scope of the

functions and duties of a Secretary has increased considerably under modern conditions and the importance of the status of the Secretary as a Company Administrator has been both judicially and statutorily recognised.

It is therefore proposed to undertake legislation to regulate the profession of Company Secretaries on the same lines as the profession of Chartered Accountants and the profession of Cost and Works Accountants which are regulated respectively by the Chartered Accountants Act, 1949 and the Cost and Works Accountants Act, 1959, since all these professions have a direct bearing on the efficient functioning of corporate sector. The Institute of Company Secretaries of India to be constituted under the proposed legislation will have the responsibility for conducting examinations for the profession of Company Secretaries for regulating the profession including professional misconduct and for creating necessary facilities for the growth and training of the members of the profession.

The Bill is intended to give effect to the above proposals. The provisions of the Bill are further explained in the notes on clauses.

NEW DELHI;

The 18th March, 1980.

P. SHIV SHANKAR.

Notes on clauses

Clause 2.—Sub-clause (1) of this clause seeks to define the various expressions used in this legislation which have not been defined in the Companies Act, 1956. Sub-clause (2) of this clause specifies as to when a member of the Institute shall be deemed to be in practice.

Clause 3.—This clause provides that the Institute of Company Secretaries of India shall be a body corporate having perpetual succession and a common seal.

Clause 4.—This clause enumerates the categories of persons who shall be entitled to have their names entered in the Register of Members of the Institute.

This clause also provides for the conferment of Honorary Fellow Membership on any person who has made a significant contribution to the profession of Company Secretaries.

Clause 5.—Under this clause, the membership of the Institute will be restricted to Associates and Fellows and such Associates and Fellows shall be entitled to use the letters A.C.S. or, as the case may be, F.C.S., after their names.

Clause 6.—This clause seeks to prohibit any member of the Institute from practising a profession of Company Secretaries unless he has obtained from the Council a certificate of practice.

Clause 7.—This clause seeks to declare that the members of the Institute shall be known as Company Secretaries.

Clause 8.—This clause enumerates the circumstances under which a person shall not be entitled to have his name entered in, or borne on, the Register of Members.

Clause 9.—This clause provides for constitution of the Council of the Institute and for the number of members who will constitute the Council.

Clause 10.—This clause deals with the mode of election of the Council. Where any dispute arises regarding any such election, the matter will be referred by the Council to a Tribunal appointed by the Central Government in this behalf. The decision of the Tribunal shall be final.

This clause also provides that the Council which functioned under the Institute of Company Secretaries of India (which Institute is proposed to be dissolved on the commencement of the legislation) may continue to function as the Council of the Institute for a period of two years or till the new Council is constituted under sub-clause (2) of clause 9, whichever is earlier.

Clause 11.—This clause empowers the Central Government to nominate any duly qualified person to fill a vacancy in the Council caused by the failure of the members of the Institute to elect any member from any regional constituency.

Clause 12.—This clause provides for the election by the Council of the President and the Vice-President, and for their term of office.

Clause 13.—This clause provides for the resignation of membership of the Council and for the mode of filling casual vacancies in the Council.

Clause 14.—Under this clause, the duration of the Council shall be three years from the date of its first meeting. Provision has also been made in this clause for allowing the Council to continue even after the expiry of its duration until a new Council is duly constituted.

Clause 15.—This clause seeks to enumerate the functions of the Council.

Clause 16.—This clause empowers the Council to appoint a Secretary and other members of the staff of the Institute, to prescribe by regulations the terms and conditions of service and the scales of pay of the Secretary and other employees of the Institute, including persons who have become employees of the Institute under clause 33, and fix the allowances of the President, Vice-President and other members of the Council and its Committees.

Clause 17.—Under this clause, the Council shall constitute, from among its members, an Executive Committee, a Disciplinary Committee and an Examination Committee. The Council is also empowered to constitute a Training and Educational Facilities Committee, a Professional Research and Publications Committee, and such other Committees as it deems necessary.

Clause 18.—This clause deals with the financial powers of the Council and also provides for accounts to be maintained by the Council and its audit.

Clause 19.—This clause empowers the Council to maintain a Register of Members to be maintained by the Council and specifies the particulars which the register should contain.

Clause 20.—This clause empowers the Council to remove the names of the members under certain circumstances.

Clause 21.—This clause specifies the procedure to be followed in inquiries relating to misconduct of the members of the Institute, and the authority which will deal with the cases relating to such misconduct.

Clause 22.—This clause seeks to define the expression "professional misconduct".

Clause 23.—Under this clause, the Council may constitute Regional Councils in the manner prescribed by regulations and specify the functions that are to be exercised by such Regional Councils. This clause also provides that the Regional Councils of the dissolved company functioning immediately before the commencement of this legislation, may continue to function for a period of two years or till they are constituted in accordance with the provisions of this section, whichever is earlier.

Clause 24.—This clause specifies the penalty for falsely claiming to be a member of the Institute.

Clause 25.—This clause provides for penalty where a person uses the name of the Council or awards any degree of Company Secretaryship in contravention of the provisions of this legislation.

Clause 26.—This clause seeks to prohibit companies from practising the profession of Company Secretaries.

Clause 27.—This clause seeks to prohibit unqualified persons from signing documents as, or on behalf of, Company Secretaries.

Clause 28.—This clause provides for the liabilities of persons in respect of the offences committed by companies.

Clause 29.—Under this clause, no person shall be prosecuted except on a complaint made by, or under the order of, the Council or the Central Government.

Clause 30.—This clause provides for filing of appeals under certain circumstances by a member of the Institute.

Clause 31.—This clause seeks to provide that the Institute of Company Secretaries of India, a company registered under the Companies Act, will be dissolved on the commencement of this legislation.

Clause 32.—This clause provides for the transfer of assets and liabilities of the dissolved company to the Institute to be constituted under this legislation.

Clause 33.—This clause seeks to provide for the transfer of the services of the employees of the dissolved company to the Institute to be constituted under this legislation.

Clause 34.—Under this clause where an order is made reprimanding a member, a record of punishment shall be entered against his name in the Register, and where the name of any such member is removed from the Register, the certificate of practice granted to him will be cancelled.

Clause 35.—This clause empowers the Central Government to issue directions to the Council which in the opinion of the Central Government may be conducive to the fulfilment of the objects of this legislation.

This clause also empowers the Central Government to dissolve the Council if the Council commits any default in giving effect to the directions.

Clause 36.—This clause seeks to prohibit any action against the Central Government or the Council in respect of anything which is in good faith done or intended to be done by or under this legislation.

Clause 37.—This clause seeks to provide that where a Firm of Company Secretaries has more than one office in India, each one of such office shall be in the separate charge of the member of the Institute, unless exempted by the Council.

Clause 38.—This clause provides for recognition of foreign qualifications on the basis of reciprocity.

Clause 39.—This clause empowers the Council to make regulations for the purposes of carrying out the provisions of the legislation. Sub-clause (2) of this clause enumerates the matters in respect of which such regulation may be made. This clause also provides that the Council has to frame the regulations subject to the condition of previous publication and with the approval of the Central Government, and for the laying of regulations before each House of Parliament.

The First and the Second Schedules.—These Schedules seek to enumerate the categories of professional misconduct.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 39 empowers the Council to make regulations for the purpose of carrying out the provisions of the legislation. The matters in respect of which such regulations may be made are specified in sub-clause (2) of that clause. These matters are of procedural character. Moreover the regulations made under this clause will have to be laid before each House of Parliament and they will be subject to the scrutiny of Parliament.

The delegation of legislative power is, therefore, of a normal character.

BILL NO. 77 OF 1980

A Bill further to amend the Aligarh Muslim University Act, 1920.

BE it enacted by Parliament in the Thirty-first Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Aligarh Muslim University (Amendment) Act, 1980.

Amend-
ment of
section 2.

2. In section 2 of the Aligarh Muslim University Act, 1920, for clause (1), the following clause shall be substituted, namely:—

40 of 1920.

‘(1) “University” means the educational institution of their choice established by the Muslims of India which originated as the Muhammadan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University.’.

STATEMENT OF OBJECTS AND REASONS

The Aligarh Muslim University Act, 1920, was enacted to establish and incorporate a teaching and residential Muslim University at Aligarh, to dissolve the societies known as the Muhammadan Anglo-Oriental College, Aligarh, and the Muslim University Association, and to transfer to, and vest in, the said University all properties and rights of the said societies and of the Muslim University Foundation Committee. It is proposed to amend the definition of "University" as contained in the Act to bring out expressly that the University is the educational institution of their choice established by the Muslims of India which originated as the Muhammadan Anglo-Oriental College, Aligarh, and which was subsequently incorporated as the Aligarh Muslim University.

2. The Bill seeks to achieve the above object.

NEW DELHI;
The 26th March, 1980.

B. SHANKARANAND.

AVTAR SINGH RIKHY,
Secretary.

